

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

- 1) FELICIA KOCH,
- 2) AMBER BLEVINS,
- 3) ASHLEY BOLDING,
- 4) CANDICE BUCHANAN,
- 5) STACY DIMAS-OLSEN,
- 6) NICHOLE ESTES,
- 7) JESSICA JAMES
- 8) MELISSA NELSON
- 9) HEATHER WEBER,
- 10) ELLY WRIGHT,
- 11) CARMILE SULVETTA,

Plaintiffs,

vs.

- 1) OFFICER DAVID JUBER, Individually and as an officer of Mabel Bassett Correctional Center,
- 2) OFFICER JAMIE BAKER, Individually and as an officer of Mabel Bassett Correctional Center,
- 3) OFFICER GILBERT DILDINE, Individually and as an officer of Mabel Bassett Correctional Center,
- 4) OKLAHOMA DEPARTMENT OF CORRECTIONS, an Oklahoma Administrative Agency,
- 5) MILLICENT NEWTON-EMBRY, Warden, Individually and official capacities as Warden of Mabel Bassett Correctional Center
- 6) CARLA KING, Deputy Warden, Individually and official capacities as Deputy Warden of Mabel Bassett Correctional Center, and

Defendants.

Case No. CIV-13-750-HE

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**PLAINTIFFS UNOPPOSED MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT IN LIEU OF RESPONSE TO  
DEFENDANTS' MOTION TO DISMISS AND BRIEF IN SUPPORT**

COME NOW the Plaintiffs, by and through their attorneys of record, and respectfully submit

this Unopposed Motion to file their Second Amended Complaint pursuant to Fed.R.Civ.P.15(a). In support of their request, Plaintiffs show the Court the following:

1. Plaintiffs filed their Amended Complaint [Dkt 8] on October 23, 2013, to which Defendants Newton-Embry, King and Department of Corrections filed their Motion to Dismiss [Dkt 24] on December 4, 2013.

2. Plaintiffs' Response to the Motion to Dismiss was initially due on December 19, 2013, but the Plaintiffs were granted an extension of time to file their Response or otherwise plead until January 9, 2014. *See, Order* [Dkt 27].

3. Counsel for Plaintiffs has contacted counsel for Defendants Newton-Embry, King, and the Department of Corrections, who has provided written permission via electronic mail for the filing of the Second Amended Complaint and an additional ten (10) days to file same.

4. The Second Amended Complaint will render moot the Defendants' Motion to Dismiss.

### **BRIEF IN SUPPORT**

Defendants Millicent Newton-Embry, Carla King and Department of Corrections do not oppose this Motion.

Leave to amend should be freely given when justice so requires. Fed.R.Civ.P 15(a)(2); *Foman v. Davis*, 371 U.S.178, 182 (1962); *Bylm v. Billings*, 568 F.3d 1224, 1229 (10<sup>th</sup> Cir. 2009). In the absence of prejudice, bad faith, or undue delay, a court should grant leave to amend. *Foman*, 371 U.S. at 182.

In this case, there is no prejudice to the Defendants and any delay is insignificant. Further, there are no pending hearings and the pending Motion to Dismiss will be rendered moot by the

proposed Second Amended Complaint.

The Plaintiff's are additionally requesting that the Court allow the Plaintiff ten (10) days to file a Second Amended Complaint in lieu of a Response to Defendants' Motion to Dismiss.

WHEREFORE, the Plaintiffs respectfully request leave to file their Second Amended Complaint in lieu of a Response to Defendants' Motion to Dismiss, that Plaintiffs be granted an additional ten (10) days to file the Second Amended Complaint, and any further relief the Court deems just and proper under the circumstances. A proposed Order is being submitted with this Motion.

Respectfully submitted,

**Taylor, Burrage, Foster, Mallett,  
Downs, Ramsey & Russell**  
A Professional Corporation

*s/Bradley H. Mallett*  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of January, 2014, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I further hereby certify that on the 8<sup>th</sup> day of January, 2014 I served the attached document by  
\_\_\_\_ U.S. Mail, \_\_\_\_ Certified Mail, Return Receipt Requested, \_\_\_\_ faxed, \_\_\_\_ delivered,  
\_\_\_\_ e-mailed to the following, who are not registered participants of the ECF System:

None

*s/Bradley H. Mallett*